

**COURT OF APPEALS  
DECISION  
DATED AND RELEASED**

July 9, 1996

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See § 808.10 and RULE 809.62(1), STATS.

**NOTICE**

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

No. 96-0623

**STATE OF WISCONSIN**

**IN COURT OF APPEALS  
DISTRICT III**

**IN THE INTEREST OF TY J. L.,  
A PERSON UNDER THE AGE OF  
EIGHTEEN:**

**STATE OF WISCONSIN,**

**Petitioner-Respondent,**

**v.**

**TY J. L.,**

**Respondent-Appellant.**

APPEAL from an order of the circuit court for Outagamie County:  
DEE R. DYER, Judge. *Affirmed.*

MYSE, J. Ty J. L. appeals an order waiving juvenile jurisdiction over him.<sup>1</sup> Ty contends that the circuit court erred by: (1) concluding that the State complied with the time limits of a local court rule and that alternatively the local court rule was not mandatory and its violation did not deprive the court of jurisdiction; (2) concluding that there was prosecutive merit for the

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<sup>1</sup> Leave to appeal this nonfinal order was granted on March 5, 1996.

charge of aiding a felon; (3) waiving him into adult court; and (4) refusing to permit the defense access to certain police reports and by refusing to grant a motion in limine excluding certain evidence. This court rejects Ty's arguments and affirms the order.

On May 11, 1995, three youths were found dead in a car in Plamann Park in Outagamie County. Thereafter, the body of Germaine G. was discovered in Langlade County. Authorities began an investigation into the deaths and the roles of two other juveniles, Jonathan K. and Derek B., in planning Germaine's death and concealing his body.

The police questioned Ty on several occasions beginning on May 12. Ty also testified at a John Doe hearing on May 16. Ty had grown up in a home which adjoined Derek's backyard and had been a good friend with one of the deceased youths. The police asked Ty whether he gave a gun to Derek, when the gun was transferred, whether Ty recognized the gun as the weapon recovered from the Plamann Park scene, when he had learned that the three boys in Plamann Park had been involved in Germaine's death, and from whom he had received this information. The police did not conduct any interviews with Ty after August 3, 1995.

On November 28, 1995, the police referred Ty's case to juvenile intake. Ty attended an intake conference with his parents and attorney and met at length with the intake worker, who recommended a consent decree containing certain terms. The district attorney, however, rejected the intake worker's recommendation and filed a petition for delinquency alleging that Ty possessed a firearm, intentionally gave a firearm to a child, and aided a felon. The district attorney later filed another delinquency petition charging Ty with two counts of perjury and a petition requesting that the circuit court waive juvenile jurisdiction over Ty.

The circuit court held a hearing on the waiver petition on February 15, 1996. At the hearing, the circuit court denied Ty's motion to dismiss that alleged the State had failed to follow local court rules. The circuit court dismissed the petition on the two perjury counts because it lacked prosecutive merit. The circuit court, however, found prosecutive merit for the counts of

possession of a firearm, transferring a firearm and aiding a felon, and waived juvenile jurisdiction over Ty.

### LOCAL COURT RULE

First, Ty contends that the State violated a local court rule and therefore the court was required to dismiss the petition. The local court rule provides in relevant part:

In Outagamie County, Juvenile Court Intake, which deals with 48.12, 48.125, and 48.13(4)[,] (6) [and] (7), is attached to the Circuit Court Children's Division. Law enforcement officers may make referrals to Juvenile Court Intake using the following procedure:

1. Police are allowed 14 calendar days from completion of investigation until receipt of referral by Intake. The Intake Worker shall dismiss any referrals received past this 14 day limit.

Ty contends that the police violated the fourteen-day limit to refer the case to intake after completion of the investigation. The circuit court concluded:

With regard to the local courtroom violation, if any, first of all, it appears that certainly it happens on many occasions that charges are not brought until the John Doe proceeding is concluded. It appears from the statements made by counsel here today, that the John Doe proceedings were not concluded until November 22nd, therefore a referral on November 28th may well, and certainly looks like appears to comply with the local court rules.

Generally, the party asserting the claim, in this case Ty, must make a prima facie showing of a rule violation. See *In re Kywanda F.*, 200 Wis.2d 26, 38-39, 546 N.W.2d 440, 446-47 (1996); *Joint School Dist. No. 1 v. Wisconsin Rapids Educ. Ass'n*, 70 Wis.2d 292, 321, 234 N.W.2d 289, 305 (1975). Ty relies on

his claim that all the facts necessary for filing the petition or referring the case to juvenile intake were in the hands of police before August 3, 1995, the day of the last contact between Ty and the police. However, the fact that the police had sufficient facts to refer the case to intake does not mean the investigation was complete. Additional investigation could have led to evidence of Ty's further involvement in the deaths of the other juveniles. The police are entitled to investigate the matter thoroughly to explore the circumstances with which the juvenile could have been involved before referring the case to intake. Otherwise, the police would be required to refer the case to intake immediately and continue forwarding new information to intake as it was gathered. Because new information would likely affect the intake worker's decision, the police are entitled to do a thorough investigation before referring the case to intake.

The fact that the investigation disclosed no other evidence of Ty's involvement is not a basis to conclude the investigation was complete earlier. With the benefit of hindsight, it now appears the police were unable to discover evidence that would implicate Ty with the events in Langlade County or Plamann Park. Nonetheless, it was reasonable for the police to investigate the entire case including the deaths before determining whether Ty was involved more deeply than the initial investigation disclosed.

Further, the circuit court made a finding of fact that the John Doe hearing concluded on November 22. This court reviews the circuit court's findings of fact under a clearly erroneous standard. Section 805.17(2), STATS. Because Ty's counsel did not object to the district attorney's statement regarding the date the John Doe hearing was concluded and no contrary evidence was introduced, the circuit court's finding was not clearly erroneous. The referral to intake was within fourteen days of the conclusion of the John Doe hearing. Ty does not demonstrate that it was unreasonable for the police to conduct a comprehensive investigation into the juveniles' deaths and Ty's involvement. This court therefore concludes that Ty failed to make a prima facie showing that the State violated the local court rule.

Further, the circuit court has inherent discretion to waive local court rules that have been adopted based on its power to control and administer the processing of the cases before them. See *Kotecki & Radtke, S.C. v. Johnson*, 192 Wis.2d 429, 446-47, 531 N.W.2d 606, 613 (Ct. App. 1995). The circuit court concluded that the local rule was archaic and noted major revisions to the juvenile law since its adoption. The circuit court, later in its waiver decision,

also stated that its waiver decision would have been the same even if the case had been referred to juvenile intake earlier. These considerations were sufficient for the circuit court, in its discretion, to waive the local court rule in this case.

Ty contends, however, that the circuit court's failure to enforce the local court rule deprived him of due process. This court disagrees. Because the local court rule is not mandatory and the circuit court had discretion to waive it, Ty has no protected interest in its enforcement. Therefore, Ty was not deprived of due process by the circuit court's failure to enforce the local court rule. *See Greenholtz v. Inmates of Neb. Penal & Correctional Complex*, 442 U.S. 1, 7 (1979).

### PROSECUTIVE MERIT

Next, Ty contends that the circuit court erred by concluding that there was prosecutive merit for the charge of aiding a felon. Whether charges brought against a juvenile have prosecutive merit is a question of law. *See In re P.A.K.*, 119 Wis.2d 871, 876, 350 N.W.2d 677, 680-81 (1984). This court reviews questions of law without deference to the circuit court. *Id.* at 876, 350 N.W.2d at 680.

Before determining whether to waive juvenile jurisdiction, the circuit court must first determine whether the matter has prosecutive merit. Section 48.18(4), STATS. A finding of prosecutive merit is functionally equivalent to a finding of probable cause in a preliminary hearing. *In re T.R.B.* 109 Wis.2d 179, 190, 325 N.W.2d 329, 334 (1982). Accordingly, the resolution of competing facts and inferences are to be resolved at trial, not at the waiver hearing. *See State v. Dunn*, 121 Wis.2d 389, 397-98, 359 N.W.2d 151, 155 (1984). The circuit court must satisfy itself that the record establishes to a reasonable probability that the alleged violation of the criminal law has been committed and the juvenile has probably committed it. *T.R.B.*, 109 Wis.2d at 192, 325 N.W.2d at 335. The circuit court may find prosecutive merit on the basis of the delinquency and waiver petitions alone. *P.A.K.*, 119 Wis.2d at 876-77, 350 N.W.2d at 681. This court will search the record for any substantial ground based on competent evidence to support the circuit court's determination of prosecutive merit. *See State v. Koch*, 175 Wis.2d 684, 704, 499 N.W.2d 152, 162 (1993).

The charge of aiding a felon under § 946.47, STATS., requires the State to show that Ty aided a felon with intent to prevent the apprehension of the felon. The relevant portion of the delinquency petition provides as follows:

[Jonathan K.] stated that Derek had told Ty L. what had happened about Jazz's [Germaine's] death and the disposal of the body and Derek made the comment, "We're going to have to stick together on this." [Jonathan K.] said that Derek and Ty helped him make up an alibi for [Jonathan K.'s] activities during the time that Germaine [G.'s] body was disposed of in Langlade County. [Jonathan K.] explained that some of the discussions with [Derek B.] and [Ty L.] continued to the next day, Friday, May 12, 1995. ... He stated that as the three of them were driving around, Derek practiced asking him questions in preparation for a potential police interview. ... [Jonathan K.] stated that he still didn't have a story down yet, so Ty [L.] drove them around some more so Ty could practice the story with him.

This court concludes that the petition contains sufficient inferences that Ty probably committed the offense of aiding a felon. According to the petition, Ty was told about Germaine's death and the disposal of his body, in which Derek and Jonathan were involved. Ty helped Jonathan make up an alibi and practiced the story with Jonathan. This supports the inference that Ty knew that Jonathan committed a crime and intentionally aided Jonathan to prevent his apprehension. Therefore, this court concludes that there was prosecutive merit for the charge of participating in concealing a felony.

#### WAIVER DECISION

Next, Ty challenges the circuit court's waiver of juvenile jurisdiction. The decision whether to waive juvenile jurisdiction is addressed to the sound discretion of the circuit court. *In re J.A.L.*, 162 Wis.2d 940, 960, 471 N.W.2d 493, 501 (1991). The circuit court's decision must be based on the criteria listed in § 48.18(5), STATS., and the court must set forth in the record specific findings with respect to the criteria. *In re C.D.M.*, 125 Wis.2d 170, 176,

370 N.W.2d 287, 290 (Ct. App. 1985). However, the circuit court has discretion as to the weight it affords each of the criteria, and it is not required to find against the juvenile with respect to each of the criteria before waiver is warranted. *In re B.B.*, 166 Wis.2d 202, 209-10, 479 N.W.2d 205, 207-08 (Ct. App. 1991). On review, this court looks to whether the record reflects a reasonable basis for the circuit court's determination. See *In re G.B.K.*, 126 Wis.2d 253, 259, 376 N.W.2d 385, 389 (Ct. App. 1985).

In this case, the record shows that the circuit court had a reasonable basis for its decision and that it appropriately weighed all the relevant criteria. Although the circuit court considered all the relevant criteria, it relied primarily on three factors. First, the court concluded that the alleged offenses were serious because a weapon was involved, children were involved, and Ty knew that the person he delivered the gun to was a gang member. Second, the court relied on the fact that Ty was over seventeen when the incident occurred and almost eighteen at the time of the hearing. Third, the circuit court concluded that, based on the testimony, the juvenile system does not have adequate and suitable services or procedures to deal with Ty. These factors provide the circuit court with a reasonable basis to waive Ty into adult court.

Ty does not challenge any of the circuit court's findings except for the seriousness of the offense. Ty suggests that the circuit court's seriousness of the offense determination was improperly affected by the fact that four juveniles had died. Ty argues that if his behavior was weighed in isolation, since he is not alleged to have had anything to do with the deaths or any knowledge of them when he delivered the gun, waiver would seem unreasonable. This court disagrees. First, the evidence shows that the gun was involved in the deaths of the three juveniles in Plamann Park. Second, the court focused on the fact that a weapon was involved and Ty gave the gun to a person he knew was a gang member. The fact that the evidence suggests that Ty was not directly involved in the deaths does not diminish the seriousness of delivering a gun to a known gang member. Ty was old enough to appreciate the natural and probable consequences of such an act. While he could not necessarily foresee these specific deaths, the consequences are not unforeseeable. Therefore, the circuit court's decision was not improperly affected by the deaths of the juveniles.

This court is satisfied that the circuit court carefully reviewed all the criteria, giving greater weight to the criteria it felt most important to the waiver decision. It is not an erroneous exercise of discretion to waive juvenile jurisdiction after giving heavy weight to one or more factors. *G.B.K.*, 126 Wis.2d at 260, 376 N.W.2d at 389. Because the circuit court considered all of the relevant criteria and had a reasonable basis for its determination, this court concludes that the circuit court did not erroneously exercise its discretion by waiving juvenile jurisdiction over Ty.

## DISCOVERY

Finally, Ty contends that the circuit court erroneously exercised its discretion by refusing to permit the defense access to certain police reports and by refusing to grant a motion in limine excluding certain evidence. This court will sustain the circuit court's discretionary decision as long as it examined the relevant facts, applied a proper standard of law and, using a demonstrated rational process, reached a conclusion a reasonable judge could reach. *Loy v. Bunderson*, 107 Wis.2d 400, 414-15, 320 N.W.2d 175, 184 (1982).

Prior to the waiver hearing, discovery is limited to inspection of materials relating to the juvenile's personality and past history, including social reports. *In re T.M.J.*, 110 Wis.2d 7, 14, 327 N.W.2d 198, 202 (Ct. App. 1982). The juvenile is not allowed discovery of materials relating to the commission of the offense that are not brought before the court. *Id.*

Ty claims that the State did not deliver the requested police reports describing his past offenses until 3:30 p.m. on the day before the waiver hearing was to commence at 10 a.m., and after he had filed a motion in limine asking the court to preclude such evidence because the State had not provided the information to him. Ty contends that because the circuit court declined to sign a discovery order and directed him to obtain the material from the State, and because the reports were not provided until the eleventh hour, the circuit court should have excluded the evidence based on the motion in limine.

This court agrees that Ty was entitled to discovery in a timely manner in order to prepare his case. Therefore, it was error for the State to have delayed discovery until the day before the hearing. This court must, however, look to whether Ty was prejudiced by the error. *See* § 805.18, STATS. Ty

contends that because of the delay, he could not conduct any investigation or locate or prepare witnesses regarding the reports. Ty, however, does not refer to any particular investigation that could have been done or any witnesses he could have called that would have changed the outcome. In addition, the circuit court in its decision to waive juvenile jurisdiction relied primarily on three factors unrelated to the police reports. Therefore, this court concludes that any error regarding the police reports was harmless. *See* § 805.18, STATS.

Ty also contends that he was prejudiced by the circuit court's failure to grant the motion in limine regarding evidence of the John Doe hearing. The only evidence admitted regarding the John Doe hearing was counsel's statement that the hearing concluded on November 22. Because Ty's counsel failed to object to this statement and no contrary evidence was received, the circuit court was entitled to rely on it. Because Ty does not refer to any other evidence relating to the John Doe hearing that was admitted, this court concludes that any error regarding the John Doe hearing evidence was harmless.

## CONCLUSION

In sum, this court concludes that: (1) the circuit court did not err when it concluded the local court rule was not violated and alternatively that the rule was not mandatory and did not deprive the court of jurisdiction; (2) there was prosecutive merit for the charge of aiding a felon; (3) the circuit court did not erroneously exercise its discretion by waiving juvenile jurisdiction over Ty; and (4) any error regarding the discovery of the police reports or material relating to the John Doe hearing was harmless. Therefore, the order is affirmed.

*By the Court.* – Order affirmed.

This opinion will not be published. RULE 809.23(1)(b)4, STATS.